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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,627	07/11/2005	Philippe Rocquet	123274	1989
25944	7590	11/08/2007		
OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850			EXAMINER ARNOLD, ERNST V	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 11/08/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/529,627	ROCQUET, PHILIPPE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ernst V. Arnold	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-39 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### *Election/Restrictions*

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The claims are drawn to a myriad number of compositions too numerous for the Examiner to enumerate and it is impossible to search each and every permutation of components. This complexity is magnified when Applicant claims compositions where the catalyst, regulating agent and aerating agent are distinct (instant claim 3) and compositions where the catalyst or aerating agent is the same as the regulating agent (claims 9 and 12). Depending on the combination of components, each composition is potentially distinct. **Applicant is required to elect a single fully disclosed composition for examination.** By fully disclosed, the Examiner means the exact chemical structure of the components for each and every component in the composition must be identified. For example, it is not satisfactory to elect the regulating agent as inorganic hydroxides. A satisfactory election for the regulating agent would be magnesium hydroxide.

The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

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Claims 1-4, 9, 12, 16, 21, 26, 38 and 39 are generic. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The innumerable number of compositions do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the compositions lack the same or corresponding special technical features for the following reasons: it appears as if the instantly claimed smoke composition comprising the instantly claimed components is taught in the art by Tsukii et al. (EP 0639331 A2).

Tsukii et al. disclose an insecticidal and acaricidal smoke fumigant formulation, which comprises: (A) 1 part by weight of granules A comprising 5 to 20 parts by weight of at least one **pyrethroid compound** as an **active ingredient**; 10 to 20 parts by weight of at least one inflammable substance selected from the group consisting of celluloid and polyvinyl nitrate; and 5 to 50 parts by weight of at least one organic blowing agent selected from the group consisting of azodicarbonamide, dinitrosopentamethylenetetramine and azo bisisobutyronitrile, the bulk specific gravity of the granules A being 0.3 to 0.9, preferably 0.3 to 0.6; and (B) 0.5 to 4 parts by weight, preferably 1 to 3 parts by weight, of granules B comprising 10 to 20 parts by weight of **potassium perchlorate**, 3 to 8 parts by weight of potassium nitrate and/or 1 to 5 parts by weight of **potassium chlorate**, 7 to 20 parts by weight of at least one burning agent

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selected from the group consisting of **starch**, lactose, cellulose, sucrose, glucose, fructose and mannitol, 3 to 8 parts by weight of at least one heat generation-regulating agents selected from the group consisting of guanidine nitrate, **dicyandiamide**, phosphoric guanylurea and guanidine sulfamate, 15 to 30 parts by weight of at least one perchlorate-decomposing aid selected from the group consisting of **potassium chloride**, triiron tetroxide, sodium chloride, copper oxide, chromium oxide, **iron oxide**, iron chloride, active carbon and ferrocene and 20 to 50 parts by weight of at least one inorganic filler selected from the group consisting of aluminum oxide, **clay**, perlite, diatomaceous earth and **talc**, the bulk specific gravity of the granules B being 0.5 to 1.1, preferably 0.6 to 1.0 (page 2, lines 16-34). The mixing ratio of granules A and granules B is 1 to 0.5-4 (Claim 1). Kaolin clay is used in Example 1 (page 3, line 40).

Since the composition of Tsukii et al. has the same amount of active as instantly claimed, then it is an effective dose of  $0.5 \text{ mg/m}^3$  to  $40 \text{ mg/m}^3$ . Pyrethroid compound is an active ingredient. Potassium perchlorate and potassium chlorate are oxidizing agents. Starch is a reducing agent. The ratio by weight of oxidizing agents and reducing agents can be 20 parts potassium perchlorate + 3 parts potassium nitrate and 1 part potassium chlorate to 8 parts starch for a ratio of  $24/8 = 3/1$ . Thus, the limitations of instant claim 1 are anticipated by Tsukii et al. Therefore, the Examiner can only conclude that Unity of Invention is lacking an election of species (composition) for examination is appropriate.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

A telephone call was made to David Minken on 1/06/07 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not

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distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

### ***Conclusion***

No claims are allowed.

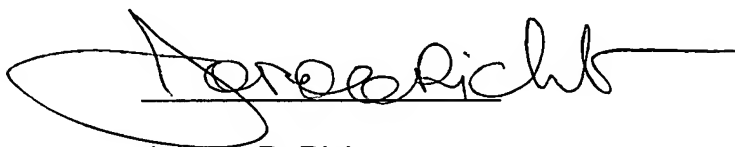
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ernst Arnold  
Patent Examiner  
Technology Center 1600  
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A handwritten signature in black ink, appearing to read "J. Richter", with a large, stylized loop on the left side and a horizontal line extending to the right.

Johann R. Richter  
Supervisory Patent Examiner  
Technology Center 1600